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# Buy American Act

## Manufactured in the United States

*Captain Paul B. Haseman, Office of the General Counsel, Department of Defense*

The Buy American Act, 41 U.S.C. § 10*a-d* (1964), established in 1933 governmental policy to give preference to American products when purchased by the government for public use. To be classified as domestic items, the Act requires that end products be "manufactured in the United States" and consist of components "substantially all" of which are American made. Otherwise, end products are classified as foreign products subject to the restrictions of the Act. The purpose of this article is to review initially the origin of the two-pronged requirement under the Act and then to focus on the meaning and application of the term "manufactured in the United States."

## LEGISLATIVE HISTORY

The dual nature of considering place of manufacture and origin of components was discussed in the legislative history of the Act. The first "Buy American" legislation appeared in the 1932 Appropriation Act for the Post Office and Treasury Departments. Those two departments were required to:

> Purchase, or contract for, within the limits of the United States, only articles of the growth, production, or manufacture of the United States. Act of 5 July 1932, ch. 43, 47 Stat. 580, 604.

The following year, Title III of the 1933 Appropriations Act for the same departments included the provisions now known as the Buy American Act. In drafting the 1933 Act, the Senate expanded the application of the Act to all executive agencies and plugged the gap in the 1932 language which permitted foreign components to be imported and assembled in the United States. When an amendment was proposed to reinsert the 1932 language in place of the expanded provisions, Senator Johnson of California noted:

> Mr. President, the Senator from Wisconsin strikes out, as I recall, lines 7 to 12 of section 2 of the bill. He inserts in lieu thereof
>
> "Articles of the growth, production, and/or manufacture of the United States."
>
> From my standpoint, the vice of his amendment is that from outside, from a foreign country, could be brought into this country the material which could be manufactured as seen fit, and then it would not be within the prohibition of the law.
>
> For instance, as I have repeatedly stated upon the floor, the impelling cause of this measure was the situation at the Boulder Dam, where it was expected that the lowest bid would be from Germany for the turbines or generating machinery and the like—a transaction involving about $6,000,000. Now, assume that they brought over from Germany part of the machinery, and assume that they brought over then in another ship another part of it, and in another ship another part of it, and then, in some factory in this country it was assembled and manufactured. Then, there would be no prohibition upon it such as I desire to put in this bill upon bids of that sort. 76 Cong. Rec. 3267 (1933)

This legislative history makes it clear that

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the dual evaluation of end products in terms of place of manufacture and origin of components was clearly the intent of Congress.

## ORIGIN OF COMPONENTS

Executive Order 10582, 27 Sept 1962, gave meaning to the statutory requirement for components to be "substantially all" American-made by requiring the value of domestic components exceed 50 percent of the value of all components incorporated in the end product. This Executive rule has received considerable commentary in court and Comptroller General decisions. As a result, this aspect of the Buy American Act is fairly well settled. Less well settled is consideration of the place of manufacture. The remainder of this article will deal with Defense regulations and Comptroller General decisions concerning place of manufacture.

## MANUFACTURED IN THE UNITED STATES

Place of manufacture has two applications to the Buy American Act. Its most obvious application is to the determination whether an *end product* was manufactured in the United States. A second application is to the determination whether a *component* of an end product is American made for purposes of the 50 percent domestic component rule. Either application generates issues of (1) how much manufacturing must take place domestically to qualify as "manufactured in the United States" and (2) what physically constitutes "manufacturing" for purposes of the Act. *Extent of Domestic Manufacturing*

A threshold question is whether "manufactured in the U.S." was meant to mean entirely manufactured in the U.S. or whether less than complete manufacture was contemplated by the Congress when they enacted the Buy American Act. The Comptroller General addressed this question and upon investigation of the following legislative history concluded that the Congress intended to set policy in general terms and leave it to administrative discretion to fix actual preferences. Comp.

Gen. Dec. B-147210, 41 Comp. Gen. 341, 345–46 (1961)

> We made an attempt earlier in our work on this bill to draft a very complicated series of preferences by which goods entirely manufactured in this country from entirely American materials, would be given first choice; goods manufactured in America partly from foreign materials and partly from American materials would come next, and so on down the line. We found before we got very far that it meant a complicated list of 9 or 10 different preferences and it was almost impossible to work them out fairly because it would be so difficult to assign in the ultimate value how much weight should attach to the different sources of manufacture or raw material. We realized that the important thing to do was to lay down in general terms the intention of Congress, that the Federal Government and also contractors having to do with the Federal Government should use American goods where possible and where it was a reasonable and proper thing to do.
>
> 76 Cong. Rec. 1894 (1933)

Based on this language the Comptroller General applied the statutory term "substantially all" both to "manufactured in the United States" and to "components" in its 1961 opinion. *Id.* However, the Comptroller General in making that decision did not have (and does not have) rule-making authority. The Executive, on the other hand, had the rule-making authority and the following year established the 50 percent rule for components but did not do so for "manufactured in the United States." The Comptroller General has subsequently shifted from its 1961 position requiring *substantially all* manufacturing in the United States by upholding procurements in which the extent of domestic manufacture was less than "substantially all." The Comptroller General now interprets the Act to require *some* domestic manufacturing of end products even if this manufacturing is as little as final assembly. When less than all manufacturing takes place in the United States, the opinions consistently examine to see where the final assembly operations occurred. In partial summary at least some manufacturing must take place domestically to include final manufacturing operations.

*What Constitutes "Manufacturing"?*

Although definitions for "manufacturing" abound, none exists in the Act, Executive Order, or ASPR. As a result, the Comptroller General has refused to sanction a definition, leaving the interpretation open to the facts of and law applicable to individual cases. 46 Comp. Gen. 813, 818–19 (1967); 39 Comp. Gen. 435, 438. However, a review of some of the cases, dealing with the manufacture of components as well as end products, draws the term "manufacturing" into sharper focus.

In a bid protest by the Hamilton Watch Co., the Comptroller General analyzed the extent of domestic manufacturing in fabricating watch components in order to determine whether the components were foreign or domestic under the 50 percent rule. Comp. Gen. Dec. B-179939, 6 June 1974. Under the facts Hamilton protested that Benrus imported the Swiss watch movement whose value as a component was more than 50 percent of the value of all the other components, making the Benrus bid subject to the restrictions of the Buy American Act. Benrus asserted, in its defense, that the movement was imported in twenty-eight unassembled parts and was then assembled in the United States as a component. The components, including the newly fabricated watch movement, were subsequently assembled into the end product watch. The Comptroller General reviewed the facts pertaining to manufacturing and agreed that, although the foreign parts which went into the movement exceeded the value of all the other domestic parts, the movement component was assembled in the United States and was one of nine domestic components. Because the movement was manufactured in the United States, the end product watch was not subject to the 50 percent component rule. In so deciding, the Comptroller General affirmed ASPR 6-001(b) which defines components as those "which are

directly incorporated in end products." This definition recognizes only "first tier" components such as the nine components of the watch; movement, dial, three hands, case, stem, crown, and strap. The parts which went into the first tier components are not considered in the 50 percent rule. Therefore, the fact, that the foreign parts (second tier or lower) of the watch movement (first tier) had a value exceeding the value of all other second tier parts, was immaterial because the domestic assembly of the foreign parts constituted manufacturing in the U.S. of the first tier movement. *See also* Comp. Gen. Dec. B-167572, 23 Sept. 1969, *reconsidered* 16 Feb. 1970.

Similar but distinguishable manufacturing analysis in another case led to a decision that manufacturing had not occurred. In this case a pill producer imported the main ingredient of the pills. This foreign main ingredient (90%) was then combined with two domestic ingredients (10%) to produce the pills. The pills were then packed in domestic bottles using domestic cotton and packaged in domestic boxes and shipping containers for delivery and distribution. The production and packaging both took place in the United States. The producer asserted that the components of the end product were the bottles, cotton, boxes, shipping containers and pills. By asserting that the pill was a first tier component domestically produced and that the end product was domestically manufactured, the producer attempted to avoid evaluation of the second tier ingredients in the pill. The Comptroller General concluded that packing and packaging were not manufacturing operations and that, in keeping with ASPR 6-001(a) and 6-104.5, an end product was an item delivered to the Government for public use. The item of actual use was the pill exclusive of the packaging which had no function in the pill's ultimate public use. Because the foreign ingredient was a first, not a second, tier component, the 50 percent rule was not satisfied resulting in a determination that the item was foreign under the Act. Comp. Gen. Dec. B-160627, 46 Comp. Gen. 784 (1967); *see* Comp. Gen. Dec. B-152352, 43 Comp. Gen. 306 (1963); Comp. Gen. Dec. B-151971, 3 Oct. 1963.

The treatment of testing and evaluation is similar to packaging; neither are considered manufacturing. The testing is performed on the completed end item which at that point is already manufactured. Comp. Gen. Dec. B-166008, 48 Comp. Gen. 727, 729.

While the mounting and alignment in the United States of a foreign electric motor onto a domestic pump assembly was domestic manufacturing, the final foreign stitching of domestic softball covers on domestic cores using domestic needles and domestic thread was foreign manufacturing. Comp. Gen. Dec. B-175526, 52 Comp. Gen. 13; Comp. Gen. Dec. B-161061, 46 Comp. Gen. 813. Obviously simple operations or processes can be manufacturing. For instance the twisting of foreign wire into metal rope was manufacturing as was mounting a thimble on the end of such rope and rerolling the wire rope on a reel. Comp. Gen. Dec. B-140904, 39 Comp. Gen. 435. Likewise, if foreign ingots are converted by a domestic manufacturing process into a material having different physical characteristics (tensile strength, ductibility, and granular structure), then the new material will be considered manufactured in the U.S. and become a domestic first tier component for purposes of the 50 per cent component rule. Comp. Gen. Dec. B-166008, 48 Comp. Gen. 727; Comp. Gen. Dec. B-158869, 45 Comp. Gen. 658. This conversion of froeign raw materials into first tier components by a manufacturing process which changes their physical characteristics is similar to the domestic assembly of foreign parts to make first tier components as in the watch movement decision. However, where manufacturing operations such as grinding, boring, machining, and plating failed to change the physical properties of a foreign forging, a different result ensued. In that decision the bidder asserted that the domestic manufacturing operations converted the foreign raw forging into a domestic component and that subsequent manufacturing operations on the component produced a domestic end product, a steel cylinder liner. The Comptroller General agreed that the manufacturing operations resulted in the end product being manufactured in the United States. Nonetheless, it was held

that none of the manufacturing operations could "be properly regarded as producing a basically new manufactured article or material at the end of any particular operation" so as to convert the foreign forging into a domestic component for purposes of the 50 percent rule. Comp. Gen. Dec. B-166008, 48 Comp. Gen. 727, 730.

## CONCLUSION

In summary, to avoid the restrictions of the Buy American Act, an end product must be manufactured domestically or conform to the 50 percent component rule. Manufacturing has not yet been defined legislatively or administratively. As a result the term has been interpreted for the most part by the Comptroller General in reviewing bid protests. In resultant decisions, analysis of the term "manufacturing" has come to play an ever increasing role in determining not only the classification, domestic or foreign, of components for purposes of the 50 percent component rule but also the classification of end products as being "manufactured in the United States." For the former purpose conversion of foreign parts or material (second tier or lower) must take place domestically to produce components (first tier) for subsequent direct incorporation in an end product. For the latter purpose at least some manufacturing of the end product must occur domestically to include final manufacturing operations in order for the end product to be "manufactured in the United States."

# "Military Justice Supervision—TJAG or COMA?"

*Rear Admiral William O. Miller, The Judge Advocate General, United States Navy*

*This address was delivered to the American Bar Association General Practice Section: Committee on Military Law in Seattle, Washington on 11 February 1977. The speech has been distributed by the American Bar Association Standing Committee on Lawyers in the Armed Forces.*

During the last 25 years, the responsibility for the supervision of the military's criminal justice system has been shared by the Judge Advocates General and the Court of Military Appeals. Under this statutory system, the Judge Advocates General have had the responsibility for the general supervision of the administration of military justice, and the Court of Military Appeals has exercised its supervisory role through its review responsibilities.

By ruling on questions of law in specific court-martial cases, the court's rationale for decisions has led to alterations—and in most cases, improvements—in the operation of the military justice system. Recent actions by the Court of Military Appeals, however, such as the decisions in *McPhail*[1] and *Ledbetter*[2], have put in question the court's view of the traditional roles of the Judge Advocates General and the court in their respective supervisory responsibilities.

I have taken—and now take—serious exception, and express my view—both personally and professionally—that the *statutory* division of responsibility is mandated by the Uniform Code of Military Justice, and by the circumstances of the military society as well—and I believe that that division of responsibility *must* remain a part of the military's criminal code—at least until changed by legislative action.

Military criminal justice is a unique and distinct system. Civilian systems only impose sanctions for violating "thou shalt not" rules, but the military system must be able to impose sanctions, too, for violations of "thou shalt" rules. Military criminal justice is designed to serve the need for discipline in a structured, ordered military force. Its distinctiveness is as basic as the Constitution. Article I, Section 8, empowers Congress "to make Rules for the Government and Regulation of

the land and naval forces," and Article II, Section 2, makes the President commander in chief of the Armed Forces—and it is pursuant to these provisions that we have the Uniform Code of Military Justice.

And this Code is just like every other Code: it places the results of past legal development, which are founded upon the needs and experiences of the society which the Code serves, in a better and more authoritative form.

Pronouncements by the Court of Military Appeals on the scope of *its* supervisory powers are not new. In such cases as *United States v. Frischholz*,[3] decided in 1966, *Gale v. United States*,[4] decided in 1967, and *United States v. Bevilacqua*,[5] decided in 1968, the court commented upon its supervisory functions under the Uniform Code of Military Justice. Each of these cases discussed the court's supervisory responsibilities in the context of the court's statutory jurisdiction.

It is my view that the Code, in Article 67, limits the power of the Court of Military Appeals to act to only specified types of court-martial cases. My belief is based on the simple reality that the U.C.M.J. is not a constitution; it is a statute. It is true as the court has remarked that the All Writs Act does provide a source of power to the court to grant ancillary relief, but the extent of that relief is—or at least should be—tied to the statutory description of the court's jurisdiction. The decision of the court on August 27, 1976, in *McPhail v. United States*,[6] however, purportedly expands the scope of its supervisory powers to include areas beyond the language of Article 67's jurisdictional grants.

In papers entitled petition for writ of certiorari or error coram nobis, Sergeant McPhail asked the Court of Military Appeals to vacate his conviction by special court-martial on the ground that the court-martial lacked jurisdiction over the offense charged. At Sergeant McPhail's trial, the military judge granted his motion to dismiss the charges for lack of jurisdiction. The convening authority disagreed with the military judge and ordered him to reconsider his ruling. In accordance with the then prevailing law, the military judge reversed his ruling and McPhail was tried, convicted, and sentenced to a punishment which did not qualify for review under the jurisdictional language of Article 67.

Sergeant McPhail, upon completion of the required reviews, sought relief under Article 69. The Judge Advocate General of the Air Force denied relief, despite the pendency before the Court of Military Appeals of *United States v. Ware*,[7] in which the court was later to hold that a military judge is not required to reverse his ruling when a convening authority orders him to reconsider it. In *McPhail* the Court of Military Appeals assumed jurisdiction *after* the denial of relief under Article 69 and ordered the Judge Advocate General to vacate Sergeant McPhail's conviction. In so doing, the court cited its supervisory powers and rejected the government's contention that the jurisdiction of the court was limited by the language of Article 67. It is significant to note, again, that Sergeant McPhail's sentence did not include a bad conduct discharge or confinement at hard labor of one year—and hence did not reach the lower jurisdictional levels of the Court of Military Appeals.

In spite of a prior decision directly to the contrary, *United States v. Snyder*,[8] the Court, in *McPhail*, justified its expanded view of its supervisory power by drawing an analogy to the general supervisory authority exercised by the Supreme Court under the Constitution over the lower federal courts.

It seems clear to me, however, that courts-martial are not the same as the lower federal courts. Courts-martial spring from Article I and Article II of the Constitution as mechanisms for the maintenance of the discipline necessary for the successful performance of the military mission.

The Court of Military Appeals is not a constitutional Supreme Court and is not an Article III court, and its proper relationship to the military judicial system cannot be deduced from the model of the judicial relations in our constitutional system. All of us agree, I think, that the role of the Court of Military Appeals,

or even its very existence, is not *constitutionally* mandated. Hence, the proper relationship between the Court of Military Appeals and the military justice system must be derived from the Code itself. It is the Code—and not the Constitution—which provides that part of the structure of the military society within which the court must function.

Under the numerous statutes which create a separate and distinct military society, including the Uniform Code of Military Justice, the scope of executive authority is considerably broader than that afforded the executive in the civilian environment. In the area of military-justice administration, this was necessitated by the critical requirement for a disciplined force, which would be and will be responsive to military demands—which, frequently, call for personal sacrifices of the highest order. Hence, the military commander was assigned important and significant functions in the management of the military justice system, and its supervision was specifically and purposely assigned—in Article 6—to a military official, the Judge Advocate General.

This, of course, would be inconceivable in the framework of relations between Article III courts and the executive in civilian life—but we are not dealing with civilian life. The Chief of Naval Operations has frequently said—and it is true—that sailors and marines are not *civilians* in uniform. They are sailors and marines—with all the rights, responsibilities, and constraints which obtain to that status. Both the Court of Military Appeals and the Supreme Court recognize this and both recognize that the military is a society different and separate—and one which has different and separate needs, and, hence, different and separate requirements.

It seems clear to me, therefore, that, in evaluating its role and its authority, the court must do so in the context of the Code itself, and not by analogy to the far different role of the Supreme Court.

And it is my view that the court owes this type of evaluation to the society which it is designed to serve.

I sincerely hope that I do not read in the court's opinion in *United States v. Ledbetter*[9] an indication to the contrary. I hope this case does not suggest that, in its efforts to develop its supervisory powers, the court will not consider itself constrained by codal provisions vesting responsibilities in the Judge Advocates General. In the issues dispositive of the case, the court in *Ledbetter* developed a test for the determination of the availability of military witnesses at Article 32 hearings. In another part of the court's opinion, however, it addressed a problem perceived by it as a threat to the independence of the military judges. It is this part of the opinion that raises my deepest concerns.

The military judge who tried Ledbetter alleged in post-trial statements that he had been asked by the Judge Advocate General of the Air Force, as well as two of his trial judiciary assistants, to justify the sentences imposed by him on Ledbetter and two other accused. General Vague responded to these allegations in a sworn statement by acknowledging that he *had* talked to the military judge about the sentences, but that he had told the military judge that an appropriate sentence was a subject matter best left to those who heard the evidence and that he was just trying to determine the facts which led to the sentences so that he could respond intelligently to any queries by the Air Force Chief of Staff.

On the basis of these statements, the court announced in language which I consider *dicta* the following:

> In the absence of congressional action to alleviate recurrence of events such as were alleged to have occurred here, we deem it appropriate to bar official inquiries outside the adversary process which question or seek justification for a judge's decision unless such inquires are made by an independent judicial commission established in strict accordance with the guidelines contained in section 9.1(a) of the ABA Standards, The Function of the Trial Judge . . . (footnote omitted)[10]

It is my view that this language is the result of the court's confusion of the Article 26 responsibilities of the Judge Advocates General for the independence of the military trial judiciary with Article 37 (a)'s prohibition against unauthorized command influence.

Let me assure you that I fully support the principle of the independence of military judges and as Judge Advocate General of the Navy I have not and will not tolerate any interference in their judicial decisions. But as Judge Advocate General I am charged with specific statutory obligations with respect to military judges, not only as their commanding officer, but also as their chief protector.

The congressional history of Article 26 indicates that its purpose was to "provide for the establishment within each service of an independent judiciary composed of military judges ... who are assigned directly to the Judge Advocate General ... and (who) are responsible *only* to him or his designees for direction and fitness ratings." Article 26 charges me to certify military judges and I believe that such responsibility implicity includes a *de*certification for disciplinary purposes. In this scheme it is clear that Congress did not intend military judges to be islands unto themselves, totally without direction or guidance from the Judge Advocate General within the military society. By equating *any* inquiry by the Judge Advocate General to unauthorized command influence, the court's language in *Ledbetter* would prevent me from obtaining any information from a military judge in the exercise of my supervisory functions over him. In addition, the prohibition would prevent me from defending my judges and ensuring their continued independence under the provisions of Article 26, because it would deny me the information I need for that purpose.

I believe that the failure of the Court of Military Appeals to properly evaluate its supervisory role in the context of the Code led to the *Ledbetter* language.

The court's language would prevent questions concerning a judge's decision by officials outside of the adversary process "unless such inquiries are made by an independent judicial commission established in *strict accordance* with the guidelines contained in section 9.1(a) of the ABA Standards, The Function of the Trial Judge ... (emphasis added)"

The critical language in section 9.1(a) is that part which empowers the highest court of the jurisdiction "to remove any judge found by it and the commission to be guilty of gross misconduct or incompetence in the performance of his duties."

I hope the Court's language, here, is not intended to be read literally—because the authority for the direction, assignment and discipline of military judges is given unequivocally to the Judge Advocates General by Articles 6, 26, and 66 of the Code. Congress clearly designated the Judge Advocates General, not the Court of Military Appeals, as the authority to whom military judges are responsible.

For these reasons, I believe that *Ledbetter's* suggestion of a judicial commission, with its provision for the highest court of a jurisdiction exercising disciplinary powers over military judges, is contrary to the clearly expressed intent of Congress in establishing the independent military judiciary by its designating the Judge Advocates General as the officials responsible for its supervision.

This brings me to the point—the single point—I want to make.

Effecting change in the basic structure of the military-justice system is the province of Congress, not of the Judge Advocates General, *and not* of the Court of Military Appeals, and, it seems to me, that those of us who perceive a need for any changes in the system—whether such would relate to the responsibilities and authorities of its participants—or otherwise—should seek them through the normal mechanism provided for effecting legislative change.

**Notes**

1. McPhail v. United States, 24 C.M.A. 304, 52 C.M.R. 15 (1976).

2. United States v. Ledbetter, 25 C.M.A. Adv. Sh. 51, 54 C.M.R. Adv. Sh. 51 (1976).

3. United States v. Frischholz, 16 C.M.A. 150, 36 C.M.R. 306 (1966).

4. Gale v. United States, 17 C.M.A. 40, 37 C.M.R. 304 (1967).

5. United States v. Bevilacqua, 18 C.M.A. 10, 39 C.M.R. 10 (1968).

6. McPhail v. United States, 24 C.M.A. 304, 52 C.M.R. 15 (1976).

7. United States v. Ware, 24 C.M.A. 102, 51 C.M.R. 275 (1976).

8. United States v. Snyder, 18 C.M.A. 480, 40 C.M.R. 192 (1969).

9. United States v. Ledbetter, 25 C.M.A. Adv. Sh. 51, 54 C.M.R. Adv. Sh. 51 (1976).

10. *Id.* at 59, 54 C.M.R. Adv. Sh. at 59.

11. *Id.*

## 214th JAG Detachment to Fort Hood

The 214th Judge Advocate General's Corps Detachment (Military Law Center), Fort Snelling, Minnesota, became one of the first newly reorganized JAGSO detachments to participate in Annual Training (FY 77) at Fort Hood, Fort Bliss and Fort Sam Houston, Texas, during February 1977.

The 214th and its subordinate units, the 128th and 117th courts-martial trial and defense teams, under the command of Colonel Harlan Sween, reported for annual active duty training to the III Corps Staff Judge Advocate Office on Sunday, 13 February 1977, for deployment to the troop unit JAG offices at Fort Hood. Nine commissioned officers, one warrant officer and five enlisted personnel from the detachments were present for training.

The unit's training mission for the commissioned officers was to participate in actual court-martial cases as assistant trial counsel and to prepare for and develop the prosecution of military offenses.

While Colonel Sween was directing the training of other elements of the 214th and its subordinates at Fort Bliss and Fort Sam Houston, Lieutenant Colonel L. Wayne Larson, assisted by Major Robert M. Frazee, directed the deployment of the reserve lawyers at Fort Hood. Members of the JAG Detachments were equally divided among the 2d Armored Division, the 1st Cavalry Division and III Corps Headquarters. The 1st Cavalry Division, Lieutenant Colonel Charles A. White, Jr., SJA, III Corps Headquarters, Colonel William H. Neinast, SJA, and 2d Armored Division, Lieutenant Colonel Jerome X. Lewis, II, SJA, provided an excellent training program for the courts-martial teams.

The 214th contingents assigned to the SJA offices at Fort Bliss and Fort Sam Houston augmented the legal assistance sections, in addition to filling in at the defense section and processing and preparing administrative board actions.

Another beneficial part of the training was the opportunity for the four enlisted reserve women court reporters to use their stenotype machines in actual courtroom situations and to transcribe and make summary records of special courts-martial. The two court reporters assigned to the 1st Cavalry were also given training in the legal clerk procedure at unit offices under the jurisdiction of the 1st Cavalry SJA.

The ability of III Corps, 2d Armored Division and the 1st Cavalry Division to absorb these JAG units and to effectively utilize the talents of reserve Judge Advocates in parallel training during a two-week period, reinforces the soundness of the One Army Doctrine.

## European Red Cross Seminar on Dissemination of the Geneva Conventions

*International Law Division, TJAGSA*

Major James Burger, Senior Instructor in the International Law Division of The Judge Advocate General's School, took part in the European Red Cross Seminar on Dissemination of the Geneva Conventions held at Warsaw, Poland, from 21 to 30 March 1977. Ms. Dorothy Taaffe, the Director of International Services of the American Red Cross headed the United States Delegation to the Seminar. The other members were Mr. Joseph Carniglia of the Washington Office of the American Red Cross, Mr. John Higgins of the European Office of the American Red Cross, and Major Hays Parks, a judge advocate officer in the United States Marine Corps.

The Polish Red Cross and the International Committee of the Red Cross organized the Seminar in compliance with Resolution XII of the Twenty-second International Conference of the Red Cross at Teheran in 1973. That resolution appealed to the National Red Cross Societies and the International Committee of the Red Cross to organize and participate in seminars for the training of specialists in international humanitarian law and in particular on dissemination and instruction on the Geneva Conventions of 1949. The seminar, in turn, proposed to make a study of the most appropriate methods for spreading knowledge of the Geneva Conventions in the armed forces, universities and schools, health services, and civil service.

Majors Burger and Parks participated generally as members of the United States Delegation, but in particular presented information on United States military training concerning the law of war. They showed two training films, "The Geneva Conventions and the Soldier" and "The Geneva Conventions and the Medic," and distributed training materials. Major Burger reports that there was open and constructive discussion of military training programs among the participants including both Eastern and Western European countries. A special *ad hoc* committee was created to study the problem of military training. Both Major Parks and Major Burger took part in the work of this committee. Its report was presented to the general session, and then referred by all delegates to the International Committee of the Red Crosss as a basis for further work and consideration.

## Fort Gordon's Successful Excursion into Word Processing

*CW4 B. John Schreiber, Jr., Office of the Staff Judge Advocate, Fort Gordon, Georgia*

As the title indicates, this article concerns the Fort Gordon Staff Judge Advocate's move to the word processing concept and establishment of a Word Processing Center.

### A Brief History and Where We Are

**BACKGROUND.** The Word Processing Center became operational in March 1976 with two employees from the office using two Mag Card II typewriters and with central dictating equipment available to all originators within the SJA Office. More specifically, each person generating typing in the office (including legal clerks) has a microphone on his desk that is linked to the central recording system located in the Word Processing Center. All the individual need do is pick up the microphone and dictate the material that is desired to be typed, and the operators in the Word Processing Center will remove the discs from the recording machines and transcribe them. There are 21 microphone stations installed throughout the offices which are housed in two two-story World War II buildings, one being across the street from the other.

**AVERAGE PRODUCTIVITY.** The following chart reflects that on an average, during the 12 month period March through February, the center has produced more than double the amount of typing produced in the month immediately prior to the implementation of word processing. Approximately 21,000 lines of type were produced the month prior to word processing; 66,783 lines of type were produced in the high month since the implementation of the word processing center.

**Production Per Month**

Lines of type of the Word Processing Center, Office of the Staff Judge Advocate, Fort Gordon, Georgia.

*Before Word Processing*

| | |
|---|---|
| Feb 76* | 20,944 |

*After Word Processing*

| | |
|---|---|
| Mar 76 | 27,396 |
| Apr 76 | 45,658 |
| May 76 | 40,989 |
| Jun 76 | 42,022 |
| Jul 76 | 44,302 |
| Aug 76 | 39,765 |
| Sep 76 | 55,552 |
| Oct 76 | 46,417 |

*After Word Processing*

| | |
|---|---|
| Nov 76 | 57,326 |
| Dec 76 | 26,709 |
| Jan 77 | 51,091 |
| Feb 77 | 53,726 |
| Mar 77 | 66,783 |

* Although no statistics were kept prior to Feb 76, that month appears to have been a "normal" month prior to the introduction of the Mag IIs.

**PRODUCTIVITY—BEFORE AND AFTER.** The following chart is statistical data comparing a week's typing productivity prior to the implementation of the Word Processing Center to four separate weeks: the first, seventeenth, thirty-fourth and fiftieth weeks, since the implementation of word processing. Highlights of this chart are: (1) The increase of the number of lines of type produced per manhour from 41 lines of type per manhour prior to word processing to an average of 145 lines of type per manhour (or an average of 1,160 lines of type per person per day) after word processing and, (2) That only approximately 3% of the amount of typing done comes from material written out in long hand; the remaining 97% is being produced either from material dictated either through the central dictating system or material that is already prerecorded and programmed.

| | Week Prior to WPC | With WPC 1–5 Mar 76 (1st Week) | With WPC 21–25 June 76 (17th Week) | With WPC 18–22 Oct 76 (34th Week) | With WPC 7–11 Feb 77 (50th Week) |
|---|---|---|---|---|---|
| Total Lines of Type (Approx 60 spaces) | 5,236 | 5,905 | 10,112 | 15,229 | 14,599 |
| Average Lines of Type Per Man Hour (53 lines per page) | 41 | 82 | 146 | 171 | 182 |
| Per Cent of Material Prerecorded or Dictated | 10% | 75% | 88% | 98% | 96.6% |
| Per Cent of Material Written Out in Long Hand | 90% | 25% | 12% | 2% | 3.4% |

**COST COMPARISON.** The following chart is a cost comparison of one month prior to word processing to the month of September 1976, which is 6 months after the implementation of word processing and February 1977 the 12th month after Word Processing. Highlights of

this chart are: (1) During the months with word processing 33,691 more lines of type were prepared on an average with an expenditure of 180 less manhours than the month prior to word processing; and (2) The cost of producing a page of type (53 lines of type per page) has gone from $6.59 per page prior to word processing to an average of $2.49 per page after word processing. This represents a decrease of $4.10 in the cost of producing a page of type.

| | Prior to WPC (Feb 1976) | After 6 Months of WPC (Sep 1976) | After 12 Months of WPC (Feb 1977) |
|---|---|---|---|
| Man Hours Typing for One Month | 504 | 342 | 317 |
| Salary Cost for One Month | $2,293.20 | $1,759.13 | $1,700.10 |
| Recurring Equipment Cost for One Month | $310.00 | $1,149.00 | $541.50* |
| Total Cost for One Month | $2,603.20 | $2,908.13 | $2,241.60 |
| Lines of Type Produced in One Month | 20,944 | 55,544 | 53,726 |
| Cost to Produce One Page of Type (53 lines of Type Per Page) | $6.59 | $2.77 | $2.21 |

* Central Dictating Equipment Purchased. Mag II typewriters being leased.

**DISCUSSION.** We believe the center has progressed swiftly and efficiently to an outstanding product producer. Department of the Army has set a guideline of an average of 800 lines of type per person per day in a word processing environment. This office's word processing center has far exceeded these guidelines.

At present, the word processing center does the great majority of the typing originating within this office and its Branches. The normal turn-around time (turn-around time being the time from receipt by the Word Processing Center to typing and receipt by the originator) is 8 duty hours or "in today—out tomorrow" on a "first in—first out" basis. This turn-around time is equitable to all branches of the office, and, as an example, has changed the waiting time for the preparation of a Last Will and Testament in the Legal Assistance Branch from several weeks to only a few days. Although the Word Processing Center has not resulted in the reduction of administrative or clerical staff, it has allowed this office to continue to handle its workload with a steady decrease of officer-attorney personnel (from 16 attorneys in February 76 to 12 attorneys in November 76). It has made the higher paid action personnel more productive while at the same time providing better service to our clients with less time lag between personal contact with the client and the finished product. This increase in productivity is due in large part to all action personnel having immediate access to central dictating equipment and being able to dictate their material, rather than having to write their material out in longhand. It is also due to the rather unexpectedly large amount of material that we have found can be pre-programmed without sacrificing individuality.

## Administrative and Civil Law Section

*Administrative and Civil Law Division, TJAGSA*

*The Judge Advocate General's Opinion*

(Duty Status.) **Administrative Absence May Be Granted For Performance Of State Jury Service.** DAJA-AL 1976/6182 (29 Dec. 1976). An inquiry from the field concerning the performance of state jury service by military personnel resulted in an opinion of The Judge Advocate General concerning the meaning of paragraph 11-1 of Army Regulation 630-5. Earlier opinions of The Judge Advocate General indicate that the Army will generally make its personnel available for state jury service, and that exemption from such service is a matter to be determined by the court concerned. The opinion also indicated that members performing such service are in a duty status for pay purposes. It was noted that Army Regulation 630-5 does not contain any specific reference to duty status during state jury service. Nevertheless, paragraph 11-1 of that regulation states that administrative absence will not be granted for the performance of "public business". The opinion pointed out that the prohibition in paragraph 11-1 against administrative absence for performance of "public business" appears to be the result of a determination that administrative absence must be at no expense to the government and that temporary absence from normal duties for the purpose of performing other "public business" would entitle the member to reimbursement for travel expenses. The opinion concluded that since performance of state jury service by members of the Army is not part of the activities or functions of the Army but is rather acquiescence to an activity or function of the state involved, such service is not "public business" within the meaning of paragraph 11-1 of Army Regulation 630-5. Therefore, administrative absence may be granted for the performance of state jury service. Finally, the opinion noted that there would be no legal objection to adopting a policy for state jury service fees similar to that applied for witness fees, namely, that such fees may not be retained by the military member (see 5 U.S.C. § 5536 and 18 U.S.C. § 201(g)) and should be remitted to the Treasurer of the United States. However, no statutory authority exists for recoupment of such fees by the United States (see DAJA-AL 1973/3916, 26 Apr. 1973).

## Legal Assistance Items

*Major F. John Wagner, Jr. and Captain Steven F. Lancaster, Administrative and Civil Law Division, TJAGSA*

### 1. ITEMS OF INTEREST.

**Commercial Affairs—Commercial Practices and Controls—Federal Statutory and Regulatory Consumer Protections—Consumer Leasing Act.** On 29 December 1976, The Federal Reserve Board published for comment three sample lease disclosure statements as proposed official Board interpretation of Regulation *Z*. The statements were proposed for use in conjunction with three types of lease transactions: (1) Open-end or finance vehicle leases, (2) closed-end or net vehicle leases and (3) furniture leases. Subsequently, the Board received thirty written comments on the proposal, and on the basis of those comments and its own analysis, the Board has revised the interpretation and has issued it in final form. While the vehicle lease provisions may not be terribly important to the legal assistance officer, legal assistance officers may well have occasion to deal with furniture leases. For discussion of this interpretation, legal assistance officers should see 41 Fed. Reg. 56657 (1976) and 42 Fed. Reg. 10970 (1977). [Ref: Ch 10, DA PAM 27-12.]

**Commercial Affairs—Commercial Practices and Controls—Federal Statutory and Regulatory Consumer Protections—Truth-in-Lending Act—What Transactions are Covered by Truth-in-Lending.** The following is an Official Staff Interpretation of Regulation *Z*, issued by a duly authorized official of the Division of Consumer Affairs and published by The Board of Governors of the Federal Reserve System; 12 C.F.R. Part 226, F.C-0048, § 226.2(q). Life Insurance Policy "Loans" not evidenced by contractual obligation are not extensions of credit and therefore are not subject to Regulation *Z*.

Feb 14, 1977

"This is in reply to your letter of *** asking whether 'loans' made against life insurance policy cash value are subject to Regulation Z. These 'loans' made by insurance carriers to policy holders, although subject to a rate of interest, are not evidenced by a contractual obligation to pay either the amount advanced or the interest thereon other than as an offset against the cash value of the policy. In effect, the policy holder is simply drawing upon the cash value that has accrued under the policy. Such 'loans' have no maturity or scheduled of payments, and consequently, it would be impossible to disclose the finance charge, the number, amount, or due dates of the payments, or the total of payments. There are no default, delinquency, or late payment charges. The only disclosure that apparently could be made, other than the amount of 'loan' ('amount financed') would be the annual percentage rate.

It is Staff's opinion that there is no debt involved here because the policy holder has not incurred an obligation to repay anything to the insurance carriers; he/she is just withdrawing from the accrued cash value of the policy. Since there is no debt, there can be no extension of credit within the meaning of § 226.2(q). Therefore, it is Staff's opinion that 'loans' of the type described here are not subject to Regulation Z.

This is an Official Staff Interpretation of Regulation Z, issued in accordance with § 226.1(d)(3) of the Regulation, and it is limited to the facts as presented herein."

Board of the Federal Reserve System, February 25, 1977 (42 Fed. Reg. 12852(1977)). [Ref: Ch. 10, DA PAM 27–12.]

**Family Law—Domestic Relations.** Family Law counseling in Hawaii has been improved by the development of a cassette giving legal assistance clients basic information about divorce and separation. This recording is designed to be played immediately prior to the client's initial meeting with a Legal Assistance Officer. The recorded message is keyed to an outline, which serves as the client's checklist during his interview with the attorney.

Use of this recording significantly reduces the amount of time that an attorney must take to discuss the general subject matter with his client. Thus, most of the interview time may be devoted to the specific facts of the individual case.

Legal Assistance offices are encouraged to consider developing comparable recordings summarizing local domestic relations laws. Copies of both the tape and associated lists and forms are available from TJAGSA, ATTN: TV Operations. Inclose a blank cassette tape of at least 20 minutes with each request. [Ref: Ch. 20, DA PAM 27–12.]

**Veterans' Benefits—Summary of Entitlements.** VA-IS-1 Fact Sheet, "Federal Benefits for Veterans and Dependents", 1 January 1977 (67 pp.). This publication is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. ($.85, Stock No. 051–000–00087–1). [Ref: Ch 44, DA PAM 27–12.]

## 2. PENDING LEGISLATION.

**Commercial Practices and Controls—Federal Statutory and Regulatory Consumer Protections—Truth in Lending Act.** H.R. 5206, 95th Cong., 1st Sess. (1977). A bill to amend the Truth in Lending Act to provide that a creditor may not be held civilly liable under the Act if the creditor is in substantial

compliance with the provisions of the Act. [Ref: Ch. 10, DA PAM 27–12.]

**Commercial Practices and Controls—Federal Statutory and Regulatory Consumer Protections—Consumer Credit Protection Act.** H.R. 5294, 95th Cong., 1st Sess. (1977). A Bill to amend the Consumer Protection Act to prohibit abusive practices by debt collectors. [Ref: Ch. 10, DA PAM 27–12.]

## Jill Wine-Volner

### General Counsel of the Army

On March 29, 1977, Jill Wine-Volner was sworn in as General Counsel by Secretary of the Army Clifford L. Alexander, Jr.

Jill Wine-Volner was born May 5, 1943, in Chicago, Illinois. She received a Bachelor of Science in Communications (Journalism) from the University of Illinois in 1964, a J.D. from Columbia University Law School in 1968 and an Honorary Doctor of Laws from Hood College in 1975. She is admitted to practice in New York and District of Columbia courts, in several U.S. Circuit Courts and Federal District Courts, and before the Supreme Court of the United States.

Immediately after graduating from Columbia Law School, Mrs. Volner joined the U.S. Department of Justice as a trial attorney in the Criminal Division, serving in the Organized Crime and Racketeering Section until 1970 and in the Labor Racketeering Section until 1973.

Mrs. Volner was appointed Assistant Watergate Special Prosecutor by Archibald Cox in 1973 and served in that capacity under Leon Jaworski and Hank Ruth until the completion of the Watergate trial in 1975. At that time, she became associated with the firm of Fried, Frank, Harris, Shriver & Kampelman in their Washington, DC office. From 1975 until her appointment as General Counsel of the Army, Mrs. Volner has, in addition to her private practice, been on the faculty of Columbia Law School as a lecturer in law.

Mrs. Volner has received many professional honors, including the U.S. Department of Justice's Special Achievement Award for Sustained Superior Performance and the U.S. Department of Justice's Meritorious Award. She is married to Washington attorney Ian D. Volner.

## JAG School Notes

**1. *Alumni Newsletter* Resumes Publication.** The Judge Advocate General's School's *Alumni Newsletter* has resumed publication. The new issue, labeled Volume 7, Numbers 1–4, is the first issue to appear since 1974. This issue covers the key events of 1975. The Association of Alumni of The Judge Advocate General's School can be contacted at P.O. Box 1903, Charlottesville, Virginia 22903.

**2. 83d Basic Class Graduates.** Major General Wilton B. Persons, Jr., The Judge Advocate General, presented diplomas to TJAGSA's 83d Basic Class at their graduation ceremony on 1 April 1977. In his address to the class, General Persons asked each graduate to be "an officer and all that implies, that you know something about the Army, and that you care something about the Army."

Captains Steven D. Meier and Douglas G. Andrews, the two distinguished graduates, shared the American Bar Association Award for Professional Merit for the highest overall class standing. Captain Andrews was awarded both the United States Court of Military Appeals Judge Paul W. Brosman Award for the

highest standing in criminal law and The Foundation of the Federal Bar Association Award for Distinguished Accomplishment for the highest standing in procurement law. Captain Meier received the Judge Advocates Association Award for Achievement for the highest standing in administrative and civil law. Captain Bruce E. Avery (Commandant's List) earned The Judge Advocate General's School Award for Distinguished Accomplishment for the highest standing in international law.

The Honor Graduates vere Captains Dodds, Gibson, and Rivers. Seven other captains made the Commandant's List.

In each of the TJAGSA moot courtrooms are two doors, labeled court judge and jury room, which have never been opened. There are two explanations for this situation: (1) the doors had no handles, and (2) the doors do not lead to rooms. Thanks to the wives of the 83d Basic Class, there is now only one explanation. The motionless doors have acquired a set of beautiful handles, and the atmosphere of the moot courtroom has been much improved.

**3. TJAG Holds Roundtable Discussion with the Advanced Class.** Also on 1 April 1977, while members of the 83d Basic Class were heading for their new assignments, General Persons held a roundtable discussion on current developments in the JAG Corps with the Advanced Class.

**4. Associated Schools Commandants Conference.** On 6–8 April 1977, TJAGSA hosted the Associated Schools Commandants Conference. Major General William L. Mundie, Commander, ADMINCEN, delivered the conference's opening and closing remarks.

**5. Mr. Miller Addresses TJAGSA Classes.** Mr. Edward A. Miller, Assistant Secretary of the Army (Research and Development), delivered the address "A Lawyer's View From the Top" to the 70th Procurement Attorney's Course and the Advanced Class on 14 April 1977.

**6. RAJA Organized.** The Retired Army Judge Advocate Association, Incorporated (RAJA) held its first annual meeting at the School from 22–24 April 1977. The organization is made up of judge advocates retired from active duty. Approximately 35 judge advocates and their wives attended the organization meeting. Dean John Jay Douglas, TJAGSA Commandant during 1970–1974, is the President of RAJA and Brigadier General Bruce Babbitt is the Secretary-Treasurer.

The next annual meeting of RAJA has been scheduled in Hawaii.

Any retiree interested in the RAJA should contact BG Babbitt at P.O. Box 1628, Fort Walton Beach, Florida 32548.

**7. Articles for *The Army Lawyer*.** *The Army Lawyer* welcomes articles written by judge advocates or civilians in the field. Articles should be typed double spaced and submitted to Editor, *The Army Lawyer*, TJAG School, U.S. Army, Charlottesville, VA 22901. Due to space limitations, it is unlikely that articles longer than twelve typewritten pages can be published. If the article contains footnotes they should be typed on a separate sheet of paper at the end of the article. Articles should follow *A Uniform System of Citation* (12th ed. 1976).

## CLE News

**1. Constructive Credit Considerations in the Correspondence Advanced Course.** Army Regulation 351–20 establishes policy that completion of a correspondence course is considered on an equal level of attainment as completion of a resident course. The Judge Advocate General's School continually reviews the correspondence courses to insure that the nonresident program retains its credibility. Developments over the past two years in selection procedures and criteria for the resident Advanced Course have resulted in closer at-

tention to the qualifications of individuals for the correspondence Advanced Course. The current prerequisites state that an applicant must be a commissioned officer whose branch is JAGC (or his service's equivalent) who has received credit for the Judge Advocate Officer Basic Course. These prerequisites will not be changed, and there is no minimum active duty experience required. However, correspondence course applicants frequently request constructive credit for portions of the Advanced Course based on their experience as judge advocate officers. Such experience generally amounts to no more than the essential qualifications for attendance at the resident course. Constructive credit is awarded only for truly unique professional qualifications and experience. Accordingly, constructive credit applications must be based on other than normal military duty before they will be granted.

**2. Workshop on Federal Procurement and Contracts.** Since 1970 The Judge Advocate General's School has offered a two week Advanced Procurement Attorneys' Course (APAC). In the early years, response to the course was very good. However, recent critiques and comments from attendees indicate that two weeks is too long for a course of this type. Themes for the course must be limited to insure that a cohesive, practical presentation is offered to the senior procurement attorney attendees. To achieve this goal, future APAC's will be limited to one week in duration. In addition, to allow discussion and resolution of practical, everyday procurement problems, a two-day Workshop on Federal Procurement will be offered. The first Workshop is scheduled for October. Procurement problems will be solicited from posts camps and stations. These problems will be reviewed by the TJAGSA faculty and selected problems will then be presented to the Workshop attendees for analysis, discussion and resolution. Course prerequisites for the Procurement Attorney's Two-Day Workshop are:

*Purpose:* The workshop provides an opportunity to examine in the light of recent developments in the law and discuss in depth current procurement problems encountered in installation SJA offices. Attorneys will be asked to submit problems in advance of attendance. These will be collected, researched and arranged for seminar discussion under the direction of the procurement law faculty.

*Prerequisites:* Active duty or Reserve Component military attorneys or appropriate civilian attorneys employed by the U.S. Government with not less than 12 months' procurement experience who are currently engaged in the practice of procurement law at installation level. Security clearance required: None.

*Substantive Content:* Discussion of current developments in procurement law and their application to the problems currently experienced in installation level procurement.

**3. 4th Law of War Instructor Course.** 4th Law of War Instructor Course, 5F-F42, 6–10 Jun 77 (4½ days). This course, particularly described in *The Army Lawyer*, March 1977, at 24, is designed to fulfill the requirement of AR 350–216 that commanders assure that formal law of war instruction at their unit/installation be conducted by a qualified team consisting of a judge advocate officer and an officer with command experience, preferably in combat.

Graduates of the three prior Law of War Instructor Courses have reported from the field that the technique, substance and innovation gained through this course have been well received by trainee audiences, and that the course materials and the training aids and plans developed by them during the course have substantially professionalized the training efforts of both JAG and non-lawyer instructors. Most conspicuously valued by attendees is the opportunity of teaching teams jointly to discuss and resolve difficult law of war teaching questions. Non-lawyer officers are especially affirmative on these points, suggesting the real value to the sponsoring command of designating to their teaching team and sending to this course, along with a judge advocate, a retainable non-lawyer whose continued utilization in law of war instruction can be projected.

Unit/installation SJA's should coordinate with the appropriate local commander or training officer for the qualification of law of war teaching teams adequate to local training demands. Registration for the 4th Law of War Instructor Course may be accomplished as outlined in *The Army Lawyer* article cited above.

**4. Correspondence Subcourse JA 151-Fundamentals of Military Legal Writing.** The new writing subcourse for the Correspondence Advanced Course has been printed and mailed to those students who were waiting for the materials. The subcourse consists of review of effective writing published by the U. S. Army Institute of Administration, a military legal citation exercise, and a series of writing requirements. These involve drafting a post trial review, a decision memorandum, a congressional inquiry response, and a policy statement for an installation level regulation.

**5. TJAGSA CLE Courses.** Information on the prerequisites and content of TJAGSA courses is printed in CLE News, *The Army Lawyer*, March 1977, at 21.

June 6–10: Military Law Instructors Seminar.*

June 6–10: 4th Law of War Instructors Course (5F-F42).

June 13–17: 33d Senior Officer Legal Orientation Course (5F-F1).

June 20–July 1: USA Reserve School BOAC and CGSC (Criminal Law, Phase II Resident/Nonresident Instruction) (5–27–C23).

July 11–22: 12th Civil Law Course (5F-F21).

July 11–29: 16th Military Judge Course (5F-F33).

July 25–August 5: 71st Procurement Attorneys' Course (5F-F10).

July 25–August 5: NCO Advanced Phase II (71D50).

August 1–5: 34th Senior Officer Legal Orientation Course (5F-F1).

August 8–12: 7th Law Office Management Course (7A-713A).

August 8–October 7: 84th Judge Advocate Officer Basic Course (5–27–C20).

August 22–May 1978: 26th Judge Advocate Officer Advanced Course (5–27–C22).

August 29–September 2: 16th Federal Labor Relations Course (5F-F22).

September 12–16: 35th Senior Officer Legal Orientation Course (5F-F1).

September 19–30: 72d Procurement Attorneys' Course (5F-F10).

*Tentative

**6. Civilian Sponsored CLE Courses.**

**JUNE**

1–3: Federal Publications, Changes in Government Contracts, San Francisco, CA. Contact: Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: 202–337–7000. Cost: $425.

2–3: Pepperdine Univ. School of Law—Federal Publications, Terminations of Government Contracts, Holiday Inn, Golden Gateway, San Francisco, CA. Contact: Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: 202–337–7000. Cost: $350.

5–10: Institute for Court Management, Caseflow Management and Juror Utilization, Keystone, CO. Contact: Institute for Court Management, Suite 1800, 1405 Curtis St., Denver, CO 80202. Phone: 303–534–3063.

6–17: LEI, Procurement Law Course, Washington, DC. Contact: Legal Education Institute, ATTN: Training Operations, BT, U.S. Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone: 202–254–3483. Cost: $400.

8–10: Federal Publications, Contracting for Services, San Francisco, CA. Contact: Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: 202–337–7000. Cost: $425.

12–17: American Academy of Judicial Education, Appellate and Trial Judges Writing Programs, Univ. of Colorado, Boulder, CO. Contact: American Academy of Judicial Education, 539 Woodward Bldg., 1426 H St. NW, Washington, DC 20005.

13–15: George Washington Univ.-Federal Publications, The Practice of Equal Employment, Las Vegas, NV. Contact: Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: 202–337–7000. Cost: $425.

13–25: NCCDLPD, Trial Practice Seminar, Houston, TX. Contact: Registrar, National College of Criminal Defense Lawyers and Public Defenders, College of Law, Univ. of Houston, 4800 Calhoun Blvd., Houston, TX 77004. Phone: 713–749–2283. Cost: $325.

13–30: NCDA, Career Prosecutor Course, Houston, TX. Contact: Registrar, National College of District Attorneys, College of Law, Univ. of Houston, Houston, TX 77004. Phone: 713–749–1571. Cost: $402.50.

21–23: LEI, Environmental Law Seminar, Washing-

ton, DC. Contact: Legal Education Institute, ATTN: Training Operations, BT, U.S. Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone: 202–254–3483. Cost: $250.

26–8 July: National College of the State Judiciary, Criminal Law/Sentencing—Graduate, Univ of Nevada, Reno, NV. Contact: National College of the State Judiciary, Univ. of Nevada, Reno, NV 89557. Phone: 702–784–6747.

29–1 July: George Washington Univ.-Federal Publications, Cost Accounting Standards, Sun Valley, ID. Contact: Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: 202–337–7000. Cost: $450.

## JULY

5–8: LEI, Institute for Legal Counsels, TJAGSA, Charlottesville, VA. Contact: Legal Education Institute, ATTN: Training Operations, BT, U.S. Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone: 202–254–3483. Cost: $350.

10–15: American Academy of Judicial Education, A Judge Trial—Problems and Answers; and A Jury Trial—Problems and Answers, Stanford Univ., Stanford, CA. Contact: American Academy of Judicial Education, 539 Woodward Bldg., 1426 H St. NW, Washington, DC 20005.

10–16: NCDA, Executive Prosecutor Course, Houston, TX. Contact: Registrar, National College of District Attorneys, College of Law, Univ. of Houston, Houston, TX 77004. Phone: 713–749–1571.

11–15: Federal Publications, Government Construction Contracting, Anaheim, CA. Contact: Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: 202–337–8200. Cost: $550.

13–14: LEI, Seminar for Attorneys on the Freedom of Information and Privacy Acts, Washington, DC. Contact: Legal Education Institute, ATTN: Training Operations, BT, U.S. Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone: 202–254–3483. Cost: $150.

16–23: CPI, Trial Advocacy Seminar, Chicago, IL. Contact: Mrs. A. Brueck, Court Practice Institute, Inc., 4801 W. Peterson Ave., Chicago, IL 60646. Phone: 312–725–0166.

17–22: ALI-ABA-Univ. of Colorado School of Law, Environmental Litigation, Boulder, CO. Contact: Director, Courses of Study, ALI-ABA Committee on Continuing Professional Education, 4025 Chestnut St., Philadelphia, PA 19104. Phone: 215–387–3000.

17–22: American Academy of Judicial Education, Citizen Judges Academy, Univ. of Virginia, Charlottesville, VA. Contact: American Academy of Judicial Education, 539 Woodward Bldg., 1426 H St. NW, Washington, DC 20005.

17–29: American Academy of Judicial Education, Trial Judges Academy, Univ. of Virginia, Charlottesville, VA. Contact: American Academy of Judicial Education, 539 Woodward Bldg., 1426 H St. NW, Washington, DC 20005.

19–21: LEI, Paralegal Workshop, Washington, DC. Contact: Legal Education Institute, ATTN: Training Operations, BT, U.S. Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone: 202–254–3483. Cost: $200.

24–29: American Academy of Judicial Education, Citizen Judges Academy, Univ. of Virginia, Charlottesville, VA. Contact: American Academy of Judicial Education, 539 Woodward Bldg., 1426 H St. NW, Washington, DC 20005.

26–28: LEI, Seminar for Attorney-Managers, Washington, DC. Contact: Legal Education Institute, ATTN: Training Operations, BT, U.S. Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone: 202–254–3483. Cost: $200.

27–29: Federal Publication, Construction Contract Modifications, San Francisco, CA. Contact: Seminar Division, Federal Publications Inc., 1725 K St. NW, Washington, DC 20006. Phone: 202–337–8200. Cost: $425.

31–5 Aug.: American Academy of Judicial Education, Citizen Judges Academy, Univ. of Colorado, Boulder, CO. Contact: American Academy of Judicial Education, 539 Woodward Bldg., 1426 H St. NW, Washington, DC 20005.

31–12 Aug.: American Academy of Judicial Education, Trail Judges Academy, Univ. of Colorado, Boulder, CO. Contact: American Academy of Judicial Education, 539 Woodward Bldg., 1426 H St. NW, Washington, DC 20005.

# Professional Responsibility

*Criminal Law Division, OTJAG*

The OTJAG Professional Ethics Committee recently considered a case involving the question whether a letter, prepared by a legal assistance officer on behalf of a dependent wife seeking support payments from her husband, threatened criminal charges solely for the purpose of obtaining support payments in violation of Disciplinary Rule (DR) 7–105(A),

Code of Professional Responsibility of the American Bar Association.

On three occasions the dependent wife of the service member had requested IG assistance in obtaining support payments from her husband. Although these actions resulted in some receipts, the payments did not continue on a regular basis.

Approximately five months after the wife's last request for IG assistance, CPT *B* wrote the letter in an attempt to coerce the service member into providing adequate monthly payments for his wife's support. The letter read in part:

> You are receiving substantial BAQ each month. This money is specifically provided to you by law and regulation to be used in the support of your dependents on a regular monthly basis. *Failure to so use this entitlement constitutes fraud and a gross dereliction of your marital responsibilities. Accordingly, you may be court-martialed under the Uniform Code of Military Justice for the wrongful failure to support your dependents. . . .*
>
> I am writing this letter to you personally to offer you one final opportunity to act responsibly towards your wife. I expect immediate response indicating your intention to honor your responsibilities and provide a regular monthly support allotment for your wife. If such a response is not forthcoming, I intend to write the strongest letters possible to your entire chain of command, your career branch, and anyone else who conceivably could assert sufficient pressure on you to act appropriately. . . (emphasis added).

Upon receipt of the letter, the service member consulted a legal assistance officer at his installation, who questioned the ethical propriety of the letter and took it to the installation SJA. The SJA forwarded a copy of the letter to DAJA-LA for a determination whether it violated policy or the Code of Professional Responsibility.

The Assistant Judge Advocate General for Military Law requested a full report from CPT *B*'s SJA regarding the preparation of the letter, noted the possibility of an ethical violation, and advised that CPT *B* could submit a statement if he so desired. After receiving the opinion of the SJA that no ethical violation had occurred and an affidavit of CPT *B*, the case was referred to the Committee for review. Because CPT *B*'s affidavit stated that he had referred the matter to a state bar association for an advisory opinion, the Committee delayed consideration of the case pending receipt of that opinion.

CPT *B*'s state bar association issued an advisory opinion which concluded that the letter in question did not comport with the aspirational standards of the Code of Professional Responsibility, citing Ethical Consideration 7–21. The state's ethics committee did not make a determination as to whether or not a specific violation of the Disciplinary Rule was involved, reciting that it was not knowledgeable as to the precise duties of a legal assistance officer.

The OTJAG Ethics Committee concluded that the letter was improper and that by writing and sending it CPT *B* violated DR 7–105(A). The Committee was of the opinion that the letter contained a clear threat of criminal prosecution and that the inference could be drawn that CPT *B* would be personally involved in the instigation of criminal charges.

Based on its finding of a violation of DR 7–105(A), the OTJAG Professional Ethics Committee recommended to TJAG that a letter of reprimand be issued to CPT *B*.

# Have You *Heard?*

## New Rules for Pretrial Confinement

*Major N. G. Cooper, Criminal Law Division, TJAGSA*

On 28 March 1977, the Court of Military Appeals handed down *United States v. Heard,*[1] a case with considerable consequences for commanders and attorneys alike. Judge Perry authored the decision, and while its immediate result was only to affirm the Air Force Court of Military Review,[2] the *dicta* in *Heard* defines some of the pretrial confinement issues left open in *Courtney v. Williams.*[3] In spite of Judge Perry's extensive analysis of pretrial confinement issues, the *Heard* decision is unsatisfactory as a true guide for resolution of the vexing problems of pretrial confinement.

Airman Heard was convicted of several forgery offenses and one offense of wrongful appropriation, thereupon receiving a punitive discharge, forfeitures and eighteen months confinement at hard labor. Prior to his court-martial he was confined by his immediate commander for twenty-two days because he was, in his commander's words, a "pain in the neck" in the unit; there was apparently no fear on his commander's part that Airman Heard would absent himself if free to do so.[5] Confining an accused prior to trial on such a basis was improper,[6] and the Air Force Court of Military Review reassessed his sentence, reducing the confinement portion thereof. Airman Heard urged the Court of Military Appeals to set aside the punitive discharge as meaningful relief for the improper pretrial confinement. The court affirmed because no prejudice remained after the Air Force Court of Military Review's action.

Judge Perry in *dicta* observes "some amount of confusion apparent in the decisions of this Court, as well as in those of civilian Federal courts, as to what in the military constitutes a lawful basis upon which to confine an accused serviceperson pending trial by court-martial."[7] He therefore concentrates on Articles 9, 10, and 13 of the Code[8] to provide a proper basis for pretrial confinement. Judge Perry rejects the argument that the language of Article 13 which provides confinement shall not be "any more rigorous than the circumstances require to insure his presence . . ."[9] should be extended to Articles 9 and 10 with the result that the "probable cause" and "as circumstances may require" language means a belief that the accused will flee before trial.[10] Rather, addressing the precise question of when a military accused should be placed in pretrial confinement, he concludes that Article 10 of the Code is the governing provision and its "as circumstances may require" language controls the question.[11]

Judge Perry further inquires what constraints limit the imposition of pretrial confinement and under what circumstances "confinement prior to trial is compelled by a legitimate and pressing social need sufficient to overwhelm the individual's right to freedom . . ."[12] Judge Perry discerns two societal factors which provide a basis for pretrial confinement. "[T]he necessity to assure the presence of an accused at his trial is an interest which will support restrictions on the individual's pretrial activities, assuming that a showing is made that it is not likely that he will be present absent them."[13] The "importance of avoiding foreseeable future serious criminal misconduct of the accused, including any efforts at obstructing justice, if he is set free pending his trial,"[14] is also recognized as a legitimate societal need.

Given the existence of these two elements in a case, Judge Perry nonetheless determines that an additional consideration must be paid heed. He holds that the language of Article 10 requires the exhaustion of lesser forms of restraint prior to the imposition of pretrial incarceration. In Judge Perry's words, pretrial confinement is only available when a "process of appropriate lesser forms of restriction or conditions on release is first tried and proves inadequate . . ."[15] He goes further in *Heard* and indicates that the Court of Military Ap-

peals adopts certain of the ABA Standards on pretrial release[16] to apply in this process. Judge Perry concludes that "adherence to these procedural and conceptual measures will meet both the possible constitutional infirmities and the practical troubles enwrapping preventive detention, and, consistently, it will apply the same force of logic to the risk of flight consideration."[17]

Chief Judge Fletcher concurs generally in Judge Perry's position on pretrial confinement, but observes that implementation of the pretrial procedure suggested by Judge Perry "would of necessity have to be the same as those for a full scale trial, without a jury."[18] Judge Cook, dissenting, apparently would adhere to the provisions of the Manual[19] respecting pretrial confinement.

*Heard* is a troublesome decision. It poses more problems than it answers with respect to pretrial confinement. It is unclear what roles the commander and magistrate/judge would have under the procedure suggested, and to what extent the civilian standards for pretrial release apply in the military community. The recognition of the safety of the community, in addition to the community's need to assure an accused's presence at trial, as a basis for incarceration perhaps gives more latitude in the pretrial confinement determination, but this factor would appear to be offset by the exhaustion of lesser restraints requirement in Judge Perry's pretrial confinement procedure. In any case, *Heard* does little to provide meaningful standards to apply to the practical problems of pretrial confinement. Undoubtedly, there is more to hear than *Heard* on the matter of pretrial confinement.

## Notes

1. United States v. Heard, No. 31,243 (C.M.A. Mar. 28, 1977).

2. United States v. Heard, 51 C.M.R. 232 (A.F.C.M.R. 1975). The Air Force Court of Military Review reassessed the approved sentence when the convening authority did not follow his staff judge advocate's advice to give "credit" for certain pretrial confinement. The Court of Military Appeals ultimately determined that a period of pretrial confinement was, indeed, unlawful, but found that the lower court's reassessment was sufficient to cure any resulting prejudice.

3. Courtney v. Williams, 24 C.M.A. 87, 51 C.M.R. 260 (1976). This case held that a "neutral and detached magistrate" must decide whether a person could be detained upon probable cause to believe he committed an offense and also whether that person should be detained. The decision was prompted in major part by the United States Supreme Court's holding in Gerstein v. Pugh, 420 U.S. 103 (1975).

4. United States v. Heard, No. 31,243, slip op. at 3 (C.M.A. Mar. 28, 1977).

5. The Court of Military Appeals in Courtney v. Williams, 24 C.M.A. 87, 90 n.12, 51 C.M.R. 260, 263 n.12 (1976) had very plainly indicated that "[t]he question whether the military person should be detained is resolved on the basis of need to detain in order to insure presence at trial. Article 13, U.C.M.J, 10 U.S.C § 813; United States v. Bayhand, 6 U.S.C.M.A 762, 21 C.M.R 84 (1956)."

6. *Id.*

7. United States v. Heard, No. 31,243, slip op. at 4 (C.M.A. Mar. 28, 1977).

8. Uniform Code of Military Justice; 10 U.S.C. §§ 809, 810, 813:

> Article 9. Imposition of restraint
>
> (a) Arrest is the restraint of a person by an order, not imposed as a punishment for an offense, directing him to remain within certain specified limits. Confinement is the physical restraint of a person.
>
> (b) An enlisted member may be ordered into arrest or confinement by any commissioned officer by an order, oral or written, delivered in person or through other persons subject to this chapter. A commanding officer may authorize warrant officers, petty officers, or noncommissioned officers to order enlisted members of his command or subject to his authority into arrest or confinement.
>
> (c) A commissioned officer, a warrant officer, or a civilian subject to this chapter or to trial thereunder may be ordered into arrest or confinement only by a commanding officer to whose authority he is subject, by an order, oral or written, delivered in person or by another commissioned officer. The authority to order such persons into arrest or confinement may not be delegated.
>
> (d) No person may be ordered into arrest or confinement except for probable cause.
>
> (e) Nothing in this article limits the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until proper authority may be notified.
>
> Article 10. Restraint of persons charged with offenses
>
> Any person subject to this chapter charged with an offense under this chapter shall be ordered into arrest

or confinement, as circumstances may require; but when charged only with an offense normally tried by a summary court-martial, he shall not ordinarily be placed in confinement. When any person subject to this chapter is placed in arrest or confinement prior to trial, immediate steps shall be taken to inform him of the specific wrong of which he is accused and to try him or to dismiss the charges and release him.

Article 13. Punishment prohibited before trial

Subject to section 857 of this title (article 57), no person, while being held for trial or the result of trial, may be subjected to punishment or penalty other than arrest or confinement upon the charges pending against him, not shall the arrest or confinement imposed upon him be any more rigorous than the circumstances require to insure his presence, but he may be subjected to minor punishment during that period for infractions of discipline.

9. *Id.*

10. See note 4, *supra*, and Boller, *Pretrial Restraint in the Military*, 50 MIL. L. REV. 71 (1970).

11. United States v. Heard, No. 31,243, slip op. at 9 (C.M.A. Mar. 28, 1977).

12. *Id.* at 10.

13. *Id.* at 10, 11.

14. *Id.* at 11.

15. *Id.* at 13.

16. ABA Standards, Pretrial Release §§ 5.1, 5.2, 5.5, 5.6, and 5.8 (1968).

17. United States v. Heard, No. 31,243, slip op. at 13–14 (C.M.A. Mar. 28, 1977).

18. *Id.* at 20.

19. Paragraph 20c, MANUAL FOR COURTS-MARTIAL, 1969 (Rev. ed.). The majority of the Court of Military Appeals takes the position that the President of the United States is limited to prescribing binding rules of procedure pursuant to Article 36, U.C.M.J., 10 U.S.C. § 836, in "cases *before* courts-martial . . ." [Emphasis added]. See United States v. Ware, 24 C.M.A. 102, 104 n.10, 51 C.M.R. 275, 277 n.10 (1976). This position places many of the Manual's provisions in jeopardy, including those pertaining to apprehension and restraint before trial.

## Criminal Law Section

*Criminal Law Division, OTJAG*

### Commutation of a Punitive Discharge to Confinement.

A recent case illustrates a potential problem of which staff judge advocates should be aware when commuting a punitive discharge to confinement.

A military judge sitting as a general court-martial convicted the accused of absence without leave and several specifications of making and uttering worthless checks and sentenced him to a bad conduct discharge. The sentence was approved as adjudged. The United States Army Court of Military Review affirmed the finding as to the absence without leave and set aside the findings as to the worthless check offenses. The court authorized the convening authority to dismiss that charge and reassess the sentence on the basis of the affirmed finding of guilty, or to set aside the sentence and order a rehearing. Choosing the first option, the convening authority commuted the bad conduct discharge to 60 days confinement at hard labor and directed that the accused be confined. While a punitive discharge may be commuted to confinmenet, the term of confinement begins to run from the date the original sentence was imposed, not the date of commutation. *United States v. Brown*, 13 C.M.A. 333, 32 C.M.R. 333 (1962). In the case here described, the accused's sentence to confinement had been long since completed legally, although he never actually served it. The issue arose when the case was forwarded to The Judge Advocate General for review pursuant to Article 69, U.C.M.J.

# Judiciary Notes

## U.S. Army Judiciary

*ADMINISTRATIVE NOTES*

1. When an appellant has been transferred from a particular command, copies of the transfer orders should be forwarded to the Office of the Clerk of Court. In the event copies of the transfer orders have not been sent to the Clerk's office and, as a result, an appellate decision is forwarded to a command which no longer has jurisdiction over the appellant, the command receiving the decision should forward a copy to the staff judge advocate office of the headquarters exercising general court-martial jurisdiction over the appellant's new unit. The copy should not be simply forwarded to the gaining unit.

2. Requests from staff judge advocates for statistical data not contained in the periodic reports sent to major command jurisdictions should be addressed in writing to the Clerk of Court, U.S. Army Judiciary, Nassif Building, Falls Church, Virginia 22041.

## International Affairs Section

*International Affairs Division, OTJAG*

**Number of United States Personnel in Post-Trial Confinement in Foreign Penal Institutions as of 28 February 1977**

| Country | Total by Service Army | Navy | Air Force | Total by Country |
|---|---|---|---|---|
| Australia | 1 | 1 | 0 | 2 |
| Canada | 0 | 1 | 0 | 1 |
| Denmark | 1 | 0 | 0 | 1 |
| Germany, Federal Republic of | 70 | 0 | 4 | 74 |
| Greece | 3 | 2 | 1 | 6 |
| Iceland | 0 | 0 | 1 | 1 |
| Italy | 3 | 6 | 0 | 9 |
| Japan | 5 | 69 | 11 | 85 |
| Korea, Republic of | 6 | 0 | 0 | 6 |
| Mexico | 2 | 4 | 0 | 6 |
| Panama | 1 | 0 | 0 | 1 |
| Spain | 0 | 8 | 0 | 8 |
| Taiwan | 0 | 2 | 5 | 7 |
| Thailand | 2 | 0 | 0 | 2 |
| Turkey | 3 | 0 | 2 | 5 |
| United Kingdom | 0 | 3 | 8 | 11 |
| Total by Branch of Service | 97 | 96 | 32 | 225 |

## JAGC Personnel Section

*PP&TO, OTJAG*

**1. OER Control Branch Code.** Personnel, Plans, and Training Office has been advised by MILPERCEN that some OERs on excess leave and funded legal education officers are incorrectly coded in that they fail to show that the control branch is JA. This mistake can result incorrect filing or even loss of the OERs when received at MILPERCEN. It is the responsibility of the rater and indorser to insure that the data on the OER is correct.

**2. Publications Available from Army Field Law Library Service.** The Army Field Law Library Service has several incomplete sets of the following publications:

Court-Martial Reports
United States Code (Supplement V only)
Statutes at Large
Decisions of the Comptroller General of the United States
US Code Congressional & Administrative News (from 1952)
Atlantic Reports 2d Series (Vols 1–276)
Court of Claims Reports
Court of Claims Digest
Northeastern Reporter (1st series)
United States Reports
Federal Reporter (2d series)
Federal Supplement
Restatements (miscellaneous subjects)
US Supreme Court Digest
US Supreme Court Reporter, Lawyers Edition (2d series)
US Treaties and Other International Agreements
US Code Annotated

Field Law Library Managers who need any of the above publications or who need individual volumes to complete their sets should contact Mr. Lonnie Phillips, Chief, Army Field Law Library Service, The Pentagon, Washington, D. C. 20310 (Autovon 227–7718). These publications will be issued on a first come-first serve basis.

**3. Warrant Officer Court Reporters.** The Judge Advocate General has received authority to appoint warrant officer court reporters on a five-year test basis. On 14 March 1977 a selection board convened in the Office of The Judge Advocate General to consider applications for appointment. The following six personnel were selected:

SP6 Michael Lanoue, 9th Infantry Division, Fort Lewis, WA
SP7 Christopher J. Rives, US Army Training Center, Infantry, Fort Dix, NJ
SP6 Robert J. Perry, 25th Infantry Division, APO SF 96225
SP6 Ronald J. Iwanski, 4th Infantry Division, Fort Carson, CO
SP6 Nila J. Morrison, US Army Training Center, Engineer, Fort Leonard Wood, MO
SP7 Clinton L. Price, 1st Infantry Division (Forward), APO NY 09137

As appointment quotas are received, the above six personnel will be appointed as warrant officers in the court reporter sub-specialty (MOS 713A7B).

Several applicants were well qualified for the traditional legal administrative technician positions. However, the court reporter subspecialty was given priority in order to get the five-year test program underway. It is anticipated that another selection board will be convened in FY 78, and at that time both court reporters and legal administrative technicians will be selected.

**4. Letter of Commendation.** *The following letter is from The Judge Advocate General.*

DEPARTMENT OF THE ARMY
Office of The Judge Advocate General
Washington, D.C. 20310

17 March 1977

DAJA-ZX

SUBJECT: Letter of Commendation

THRU: Commander
US Army Forces Command
Fort McPherson, Georgia 30330

Commander
US Army Support Command, Hawaii
APO San Francisco 96558

TO: SFC George E. Thorne, Jr.
Office of the Staff Judge Advocate
US Army Support Command, Hawaii
APO San Francisco 96558

1. I commend you for your achievement of independently, and on your own initiative, instituting and effecting a diversified and truly outstanding training program for legal clerks assigned to US Army Support Command, Hawaii and Tripler Army Medical Center. As a result of your dedication and efforts, these legal clerks now possess in-depth knowledge of all functions related to their career field. Your unselfish devotion to this task and employment of many off-duty hours to establish a well-rounded and professionally constructed instruction encompassing all areas of legal clerk responsibilities are characteristic of a truly outstanding chief legal clerk and noncommissioned officer. Your interest in maintaining and improving the proficiency of your subordinate legal clerks should be a source of special pride to you.

2. Again, I commend you for your initiative and for a job well done. A copy of this letter will be placed in your Official Military Personnel File.

WILTON B. PERSONS, JR.
Major General, USA
The Judge Advocate General

**5. Assignments.**

*COLONELS*

| *NAME* | *FROM* | *TO* | *APPROX DATE* |
|---|---|---|---|
| DAVIS, Gerald W. | FORSCOM | USMA | Jun 77 |
| HOLDAWAY, Ronald M. | OTJAG | USA Elm Industrial Col of Armed Forces, Ft McNair, Washington, DC | Aug 77 |
| LAKES, Cecil T. | OTJAG | Avn Sys Cmd, St Louis, MO | Jul 77 |
| MEYER, Harvey B. | Test & Eval Cmd, APG, MD | OTJAG | Jul 77 |
| MUNDT, James A. | 4th Inf Div, Ft Carson, CO | US Army Japan | Aug 77 |

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|---|---|---|---|
| MURPHY, Eugene J. | Avn Sys Cmd, St Louis, MO | USACC, Ft Huachuca, AZ | Jun 77 |
| RECTOR, Lloyd K. | USA War Col | FORSCOM | Jul 77 |

*LIEUTENANT COLONELS*

| | | | |
|---|---|---|---|
| BOLLER, Richard R. | 5th Inf Div, Ft Polk, LA | USALSA | Aug 77 |
| BRIGGS, David B. | USA Proc Agcy, APO NY 09710 | Ofc of Gen Counsel, Washington, DC | Jul 77 |
| CUMMING, Richard E. | USA Rgn Spt Ele, APO NY 09227 | USA Msl Cmd, Redstone Arsenal, AL | Jul 77 |
| DE FRANCESCO, Joseph J. | USACC, Ft Huachuca, AZ | USAMTMC, Oakland, CA | Jul 77 |
| GREEN, James L. | OTJAG | USA QM Ctr, Ft Lee, VA | Jul 77 |
| MC CUNE, James N. | TJAGSA | Eighth US Army, APO SF 96301 | July 77 |
| MC KAY, William P. | OTJAG | USAG Pres of SF, CA | Jun 77 |
| MITTELSTAEDT, Robert N. | VII Corps, APO 09107 | Claims Svc, Ft Meade, MD | Aug 77 |
| MULLINS, Jack A. | Eighth US Army, APO SF 96301 | 193d Inf Bde, APO NW 09832 | Sep 77 |
| QUATANNENS, Louis S. | USALSA | TECOM, APG, MD | Jun 77 |
| SUTER, William K. | 101st ABN Div, Ft Campbell, KY | OTJAG | Jul 77 |
| WAGNER, Keith A. | US Army Japan | USA Combined Arms Ctr, Ft Leavenworth, KS | Sep 77 |
| YAWN, Malcolm T. | USA Msl Cmd, Redstone Arsenal, AL | Armd Fcs Claims Svc, APO SF 96301 | Jun 77 |
| YELTON, James M. | Eighth US Army, APO SF 96301 | Sixth US Army, Pres of SF, CA | Jul 77 |

*MAJORS*

| | | | |
|---|---|---|---|
| ARNESS, Franklin D. | USAREUR | Claims Svc, Ft Meade, MD | Aug 77 |
| BEANS, Harry C. | 25th Inf Div, Hawaii | TJAGSA | Aug 77 |
| BURNS, Thomas P. | USALSA, APO 09403 | USA RCPAC, St Louis, MO | Jul 77 |
| COLEMAN, Gerald C. | OTJAG | USAG APG, MD | Aug 77 |
| EGGERS, Howard C. | 7th Inf Div, Ft Ord, CA | OCLL, Pentagon | Jul 77 |
| EISENBERG, Stephen A. J. | USAG, Ft Hamilton, NY | 26th Adv Cls, TJAGSA | Aug 77 |
| GREENE, William P. | OTJAG | 3d Inf Div, APO 09036 | Jul 77 |
| HAESSIG, Arthur G. | USALSA/Korea | Cmd & Gen Staff Col | Aug 77 |
| JACUNSKI, George G. | OCLL, Pentagon | US Army Japan, 96343 | Aug 77 |
| LESH, Newton D. | 4th Ind Div, Ft Carson, CO | USA Engr Ctr, Ft Belvoir, VA | Jul 77 |
| MURPHY, James A. | USMA | OTJAG | Jul 77 |
| PIOTROWSKI, Leonard R. | TJAGSA | 7th Inf Div, Ft Ord, CA | May 77 |
| PLATT, Edgar C. | Claims Svc, APO 96301 | Claims Svc, Ft Meade, MD | Aug 77 |
| SCANLON, Jerome W. | Fld Arty Ctr, Ft Sill, OK | USMA | Jun 77 |
| SHERWOOD, John T., Jr. | USALSA | USMA | Jun 77 |
| STEINBERG, Barry P. | USAG APG, MD | Cmd & Gen Staff Col | Aug 77 |
| TURNER, John A. | III Corps, Ft Hood, TX | Flt Arty Ctr, Ft Sill, OK | Jun 77 |

*CAPTAINS*

| | | | |
|---|---|---|---|
| ARGUE, Warren J. | 1st Armd Div, APO 09326 | 26th Adv Cls, TJAGSA | Aug 77 |
| BARRY, Bruce C. | VII Corps, APO 09107 | 26th Adv Cls, TJAGSA | Aug 77 |
| CASEY, Peter L. | USACC, Ft Huachuca, AZ | 26th Adv Cls, TJAGSA | Aug 77 |
| COPPENRATH, Gerald R. | TJAGSA | 26th Adv Cls, TJAGSA | Aug 77 |
| CORBIN, Robert P. | XVIII ABN Corps, Ft Bragg, NC | USALSA | Jul 77 |
| DAVIDSON, Van M. | 1st Inf Div, APO 09137 | 26th Adv Cls, TJAGSA | Aug 77 |
| DODSON, Roy L. | Sup Cmd, Hawaii | 26th Adv Cls, TJAGSA | Aug 77 |
| ELLIOTT, Harold W. | 4th Msl Cmd, APO 96208 | 26th Adv Cls, TJAGSA | Aug 77 |
| FOWLER, Joseph C. | USAG, Ft Devens, MA | 26th Adv Cls, TJAGSA | Aug 77 |
| FRANCONE, Bruce E. | 3d Armd Div, APO 09165 | USA AVN SYS CMD, St Louis, MO | Sep 77 |
| GALEHOUSE, Lawrence D. | Inf Ctr, Ft Benning, GA | 26th Adv Cls, TJAGSA | Aug 77 |
| GUEHL, Robert L. | Armd Frcs Inst, Walter Reed, Washington, DC | Claims Svc, Ft Meade, MD | May 77 |
| HARPER, Stephen J. | Inf Ctr, Ft Benning, GA | 26th Adv Cls, TJAGSA | Aug 77 |
| HENDERSON, Robert H. | 1st Armd Div, APO 09326 | 26th Adv Cls, TJAGSA | Aug 77 |
| HOLLOMAN, John T. | US Army Japan | 26th Adv Cls, TJAGSA | Aug 77 |
| HOLMES, David L. | XVIII ABN Corps, Ft Bragg, NC | USALSA | Aug 77 |
| JONES, Robert D. | USALSA | 26th Adv Cls, TJAGSA | Aug 77 |
| JUDD, Kim K. | USAG, Ft Carson, CO | 26th Adv Cls., TJAGSA | Aug 77 |
| KAPLAN, Marshall M. | 25th Adv Cls, TJAGSA | USALSA/Korea | Jun 77 |
| KELLY, Jerome E. | USAG, Ft Meade, MD | DARCOM, Elx, VA | May 77 |
| KESLER, Dickson E. | Claims Svc, Ft Meade, MD | 26th Adv Cls, TJAGSA | Aug 77 |
| KIRK, William C. | USALSA | 26th Adv Cls, TJAGSA | Aug 77 |
| LANE, Thomas C. | OTJAG | 26th Adv Cls, TJAGSA | Aug 77 |
| LUEDTKE, Paul J. | OTJAG | 26th Adv Cls, TJAGSA | Aug 77 |
| MACKEY, Richard J. | 9th Inf Div, Ft Lewis, WA | 26th Adv Cls, TJAGSA | Aug 77 |
| MARSHALL, Frank C. | USAREUR | 26th Adv Cls, TJAGSA | Aug 77 |
| MASON, Leslie K. | USA Depot, Anniston, AL | 26th Adv Cls, TJAGSA | Aug 77 |
| MC LAURIN, John P., III | NATO/SHAPE | 26th Adv Cls, TJAGSA | Aug 77 |
| MELBARDIS, Wolfgang A. | USMA | 26th Adv Cls, TJAGSA | Aug 77 |
| MERCK, Larry S. | USATC, Ft Jackson, SC | 26th Adv Cls, TJAGSA | Aug 77 |
| MULDERIG, Robert J. | 1st Armd Div, APO 09326 | Transportation Center, Ft Eustis, VA | Aug 77 |
| NORTHROP, John J. | USATCI, Ft Dix, NJ | 26th Adv Cls, TJAGSA | Jul 77 |
| NORTON, James M. | USATC, Ft Benning, GA | 26th Adv Cls, TJAGSA | Aug 77 |
| PINE, Louis F. | Acdy of Health Svcs, Ft Sam Houston, TX | 26th Adv Cls, TJAGSA | Aug 77 |

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|---|---|---|---|
| RANEY, Terry W. | Comb Arms Tng Cen, APO 09114 | 26th Adv Cls, TJAGSA | Aug 77 |
| REHYANSKY, Joseph A. | TJAGSA | 26th Adv Cls, TJAGSA | Aug 77 |
| ROSENBLATT, James H. | TRADOC | 26th Adv Cls, TJAGSA | Aug 77 |
| ROWAN, James T. | Def Lang Inst, Pres of Monterey, CA | 1st Sup Bde, APO 09325 | Jul 77 |
| SAYNISCH, Stephen V. | USAG, Ft Sheridan IL | 26th Adv Cls, TJAGSA | Aug 77 |
| SCHEMPF, Bryan H. | USAG, Ft Meade, MD | 26th Adv Cls, TJAGSA | Aug 77 |
| SCHWENDER, Craig S. | 1st Armd Div, APO 09326 | 26th Adv Cls, TJAGSA | Aug 77 |
| SMITH, Douglas C. | 193d Inf Bde, APO 09829 | 26th Adv Cls, TJAGSA | Aug 77 |
| SMITH, James J. | 172 Inf Bde, APO 98732 | 26th Adv Cls, TJAGSA | Aug 77 |
| STEPHENS, Frederic S. | VII Corps, APO 09107 | 26th Adv Cls, TJAGSA | Aug 77 |
| TAYLOR, Thomas W. | USMA | 26th Adv Cls, TJAGSA | Aug 77 |
| TOOMEY, Allan A. | CID Cmd, Washington, DC | 26th Adv Cls, TJAGSA | Aug 77 |
| VARO, Gregory O. | TJAGSA | OTJAG | Jun 77 |
| WALL, Michael J. | XVIII Corps, Ft Bragg, NC | USALSA | Aug 77 |
| WALLACE, John K. | Sup Cmd, APO 96558 | 26th Adv Cls, TJAGSA | Aug 77 |
| WAPLE, Mark L. | XVIII Corps, Ft Bragg, NC | 26th Adv Cls, TJAGSA | Aug 77 |
| WILLIAMS, Larry D. | 1st Armd Div, APO 0326 | 26th Adv Cls, TJAGSA | Aug 77 |
| WILLIAMS, Robert B. | V Corps, APO 09079 | 26th Adv Cls, TJAGSA | Aug 77 |
| ZUCKER, David C. | USALSA | 26th Adv Cls, TJAGSA | Aug 77 |

*WARRANT OFFICERS*

| | | | |
|---|---|---|---|
| BLACK, Carl E. | 82d ABN Div, Ft Bragg, NC | FORSCOM | Jun 77 |
| CAMIRE, Walter L. | CID Cmd, Washington, DC | 2nd Inf Div, APO 96224 | Jul 77 |
| JONES, Robert E. | Avn Trp Bde, Ft Rucker, AL | 9th Inf Div, Ft Lewis, WA | Jun 77 |
| PERKINS, Andrew J. | 2nd Inf Div, APO 96224 | USAREUR, 8th Inf Div | Sep 77 |
| RECCA, James J. | FORSCOM | OTJAG | May 77 |
| WATTS, Earl D. | OTJAG | USMA | Jun 77 |
| WEST, Charles L. | TJAGSA | US Army Japan | Aug 77 |

## 5. AUS Promotions.

*LIEUTENANT COLONELS*

| | |
|---|---|
| Nancy A. Hunter | 1 Mar 77 |
| Oliver Kelley | 1 Mar 77 |
| Leonard E. Rice | 1 Apr 77 |

*MAJORS*

| | |
|---|---|
| Robert J. Mulderig | 1 Apr 77 |

**6. RA Promotions.**

*CAPTAINS*

| | |
|---|---|
| Fitzhugh Godwin, Jr. | 21 Mar 77 |
| Stephen M. Bickford | 26 Apr 77 |

*FIRST LIEUTENANTS*

| | |
|---|---|
| Robert P. Corbin | 28 Mar 77 |
| Jack M. Hartman | 28 Mar 77 |
| Stephen Henderson | 28 Mar 77 |

## Current Materials of Interest

### Review of the 1975-76 C.M.A. Term

The *Indiana Law Journal*, Volume 52, Number 1, Fall 1976, contains a section entitled "United States Court of Military Appeals: A Review of the 1975–76 Term." The issue contains six articles:

Willis, *The United States Court of Military Appeals: "Born Again."*

Note, *Parties and Offenses in the Military Justice System: Court-Martial Jurisdiction.*

Note, *Building a System of Military Justice Through the All Writs Act.*

Note, *Self-Incrimination in the Military Justice System.*

Note, *Searches and Seizures in the Military Justice System.*

Note, *The Right to Counsel at Summary Courts-Martial: COMA at the Crossroads.*

Copies of this issue are available for $4 each (which includes second class postage, add $2 for first class postage) from the following address:

Indiana Law Journal
Indiana University School of Law
Law Building Annex
Bloomington, Indiana 47401

### Articles

Note, *The Fourth Amendment and Foreign Searches: A Standard for the Admission of Evidence*, 36 WASH. & LEE L. REV. 263 (1977).

Greenwood, Skupsky, Tollar, Veremko & Jeske, *Microfilm and the Courts*, STATE COURT J., Winter 1977, at 9.

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### Recent Decision

*Constitutional Law—Fourth Amendment—Electronic Surveillance by the U.S. Army of U.S. Citizens or Organizations Located Overseas Requires Prior Judicial Approval Unless There Exists Evidence of Collaboration With or Action On Behalf of a Foreign Power.* Berlin Democratic Club v. Rumsfeld, *410 F. Supp. 144*

*(D.D.C. 1976) (order on pretrial motions)*, 17 VA. J. INT'L L. 131 (1976).

**Book Reviews**

Lieutenant Colonel Jon A. Reynolds, *Question of Honor*, AIR U. REV., Mar.-Apr. 1977, at 104. [Review of JOHN A. DRAMESI, CODE OF HONOR (1975).]

*Book Review*, 65 GEO. L.J. 871 (1977) [Review of HARVARD LAW REVIEW ASSOCIATION, A UNIFORM SYSTEM OF CITATION (12th ed. 1976)].

**Veterans Benefits**

Eligibility criteria for job counseling and employment placement benefits are incorrectly stated on GTA 21-2-1, Discharge Benefit Chart. All veterans, other than those who have been dishonorably discharged from the armed forces, are eligible to receive this form of assistance, which is administered by the United States Department of Labor. Accordingly, the entry in the fourth column of line 6 (in the category, "Benefits Administered by Other Federal Agencies") should be changed from "NE" to "E". It is anticipated that this chart will be revised in the near future.

By Order of the Secretary of the Army:

BERNARD W. ROGERS
*General, United States Army*
*Chief of Staff*

Official:
PAUL T. SMITH
*Major General, United States Army*
*The Adjutant General*

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